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No. 80-195

IN THE

Supreme Court of the United States

OCTOBER TERM, 1980

METROMEDIA, INC.,

Appellant,

v.

CITY OF SAN DIEGO, a municipal corporation, and DOES I through XX, inclusive,

Appellees.

PACIFIC OUTDOOR ADVERTISING CO., INC.,

Appellant,

v.

THE CITY OF SAN DIEGO, a municipal corporation, THE CITY COUNCIL OF SAN DIEGO, VOYD BEIGHTS, Zoning Administrator of the City of San Diego and DOES 1 through 10, inclusive,

Appellees.

ON APPEAL FROM THE SUPREME COURT OF CALIFORNIA

JOINT APPENDIX

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APPEAL DOCKETED AUGUST 8, 1980

PROBABLE JURISDICTION NOTED OCTOBER 14, 1980

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* * *

Pursuant to Rule 30 of the Rules of this Court, the following opinions, orders, notices, constitutional and statutory provisions and exhibits have been omitted in printing this appendix because they appear on the following pages in the appendix to the Jurisdictional Statement:

Memorandum of Intended Ruling of the Superior Court of California, County of San Diego, May 27, 1975 ..... JS 81a

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DATE	PROCEEDINGS
April 26, 1972	Complaint of Plaintiff Metromedia, Inc., filed
May 10, 1972	Complaint of Plaintiff Pacific United Services Corp., filed
May 26, 1972	Answer to Complaint of Pacific United Services Corp., filed
May 28, 1972	Answer to Complaint of Metromedia, Inc., filed
March 23, 1973	Stipulation and Order of the Superior Court of the State of California, County of San Diego to Consolidate Cases, filed
May 3, 1974	Amended Complaint of Pacific Outdoor Advertising Co., filed
December 6, 1974	Plaintiffs' Joint Motion for Summary Judgment and Defendant's Notice of Motion and Motion for Summary Judgment, filed
February 28, 1975	Hearing held before the Superior Court of the State of California, County of San Diego
May 27, 1975	Memorandum of Intended Ruling of the Superior Court of California, County of San Diego
July 2, 1975	Order of the Superior Court of California, County of San Diego directing entry of judgment for plaintiffs, entered

Chronological List of Relevant Docket Entries

DATE	PROCEEDINGS
July 9, 1975	Defendant's Notice of Appeal to the Court of Appeal, Fourth Appellate District, filed
February 11, 1977	Opinion of the Court of Appeal, Fourth Appellate District*
March 22, 1977	Defendant's Petition for Hearing in the Supreme Court of California, filed
March 21, 1979	Opinion of the Supreme Court of California*
May 23, 1979	Order of Supreme Court of California granting rehearing
April 14, 1980	Opinion of the Supreme Court of California on rehearing**
May 14, 1980	Order of the Supreme Court of California denying rehearing, entered
May 14, 1980	Opinion of the Supreme Court of California as modified
July 25, 1980	Plaintiffs' Notice of Appeal to the United States Supreme Court, filed
August 9, 1980	Appeal to the United States Supreme Court, docketed
October 14, 1980	Order of the United States Supreme Court Noting Probable Jurisdiction

* Subsequently vacated.

** Subsequently modified on denial of rehearing.

Complaint of Metromedia, Inc.
Filed April 26, 1972

SUPERIOR COURT
OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF SAN DIEGO

No. 332881

METROMEDIA, INC., a corporation, doing business as FOSTER AND KLEISER,

Plaintiff,

v.

CITY OF SAN DIEGO, and DOES I through XX, Inclusive,

Defendant.

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Complaint of Metromedia, Inc.

COMPLAINT FOR DECLARATORY RELIEF; FOR TEMPORARY RESTRAINING ORDER; FOR PRELIMINARY INJUNCTION; and FOR PERMANENT INJUNCTION

Plaintiff, METROMEDIA, INC., a corporation, doing business as FOSTER AND KLEISER, by this verified Complaint represents and alleges as follows:

I

METROMEDIA, INC. (hereinafter referred to as "Metromedia") is a Delaware corporation duly authorized to and doing business in the State of California. Metromedia is legally engaged in the outdoor advertising business in the State of California and the City of San Diego through its Foster and Kleiser division. Metromedia has filed the statement and published the notice required by Sections 17910 and 17917 of the California Business and Professions Code with respect to its business conducted by and under the name of its Foster and Kleiser division.

II

Defendant the City of San Diego is an incorporated city located within San Diego County in the State of California.

III

The true names and capacities of the defendants identified herein as DOES I through XX, Inclusive, are unknown to plaintiff and are therefore sued herein by said fictitious names. Plaintiff is informed and believes that said defendants are officers, officials, agencies, political subdivisions and employees of the City of San Diego and are responsible for the enactment and/or enforcement of the purported ordinances hereinafter described. Plaintiff will seek leave

of court to set forth their true and correct names and capacities when the same have been ascertained. Defendants are hereinafter referred to, for convenience, simply as "defendant".

IV

At all times herein mentioned plaintiff was and now is the legal owner of numerous outdoor advertising displays located in the City of San Diego. Each such display is located on property leased by the owner thereof to the plaintiff for the purpose of maintaining outdoor advertising displays thereon. Each such display was erected in full compliance with all applicable laws of the State of California, in the County of San Diego and the City of San Diego and is being maintained in compliance with all such laws except to the extent that there is a dispute between plaintiff and defendant as to the validity and constitutionality of certain ordinances of the City of San Diego as hereinafter specified.

V

All of the outdoor advertising display signs owned and maintained by the plaintiff in the City of San Diego are either located in areas which have been zoned for commercial and industrial purposes by defendant or in areas otherwise suitable and appropriate for the maintenance and utilization of outdoor advertising displays. Each of said signs is located in an area where its use is compatible with other uses of property in the same area and each such sign was erected and is being maintained in full compliance with all building and zoning laws of the City of San Diego. Plaintiff owns over eight hundred of said signs in the City of San Diego.

VI

The display signs referred to in the foregoing paragraph produce substantial gross annual income to the plaintiff. The signs owned by the plaintiff have varying values depending upon the size, nature and location of each respective sign. Plaintiff alleges that all of said signs have a present market value considerably in excess of Two Thousand Dollars and that a substantial number of said signs have a present market value of many thousands of dollars. Each of the display signs has a remaining useful income-producing life in excess of forty (40) years. The cost of producing and erecting each display sign varies depending upon the size and nature of the sign, but is, in each instance, substantial.

VII

Outdoor advertising is customarily purchased on the basis of a presentation or campaign requiring multiple exposure. A network of signs is necessary to carry on the business and constitutes a viable integrated business and not a mere collection of separate properties. Thus, the ownership of outdoor advertising display signs in various parts of a geographic area, visible to various segments of the consuming public is essential to the profitable operation of the outdoor advertising business. Each such sign provides exposure to various portions of the populace and each sign forms an integral part of an interdependent whole. Advertisers customarily purchase advertising space from the plaintiff in a manner which affords the exposure of that advertiser's message, whether commercial, political or social, to a widespread and diverse segment of the public. As a result, each sign, in addition to producing income in

and of itself, lends value to the entire system. Each sign is worth substantially more as a part of this system than it is separately. Similarly, the subtraction of any sign in the system reduces the income-producing value of the entire system in an amount greater than the amount of the income from the particular sign. The value of each sign as a part of an overall system is not readily susceptible to precise measurement.

VIII

Outdoor advertising is a legitimate commercial use of property adjacent to roads and highways, an integral part of the business and marketing function and an established segment of the national, state and local economy. The outdoor advertising business conducted by plaintiff produces income to a variety of segments of the national, state and local economy and stimulates the flow of trade and commerce. The owners of land on which advertising displays are located receive income from the use of their property. Advertising agencies and their employees derive income from outdoor advertising. Outdoor advertising increases sales and provides numerous direct and indirect benefits to the public. Valuable commercial, political and social information is imparted to the public through the use of outdoor advertising. Many businesses, holders of official government positions and candidates for such offices and social entities rely heavily upon outdoor advertising to communicate their messages to the public because other forms of advertising are inefficient, inappropriate or prohibitively expensive.

IX

Many of the outdoor advertising signs owned by plaintiff in the City of San Diego are located within 660 feet from

the edge of the right-of-way of interstate and federal aid primary highways and the advertising copy thereon is visible from said highways.

X

Some of the signs owned by plaintiff in the City of San Diego are located on property owned by the State of California and leased to plaintiff for the operation, maintenance and use of outdoor advertising displays.

XI

On or about March 14, 1972, the City Council of the City of San Diego purported to adopt Ordinance No. 10795. Said ordinance purports to totally prohibit the erection, maintenance and use of outdoor advertising displays throughout the City of San Diego and to require the removal of all existing signs. Said ordinance requires the removal of all signs located within 500 feet of all freeways, landscaped freeways, scenic highways or freeways and parkways within 90 days following the effective date of the ordinance. All other displays within the City of San Diego are required to be removed on certain specified dates between April 1, 1973 and April 1, 1976 depending upon an "abatement schedule" which is based entirely upon the original cost of the display and the time which has elapsed since its erection. Said ordinance purports to impose upon the sign owner, the owner of the premises upon which the sign is located and the occupant of the premises upon which the sign is located the obligation to remove non-conforming signs and imposes upon said parties civil liabilities for the costs of removal of said signs. Said ordinance provides no compensation to the owners of signs or landowners for the

property which is taken and the rights which are confiscated thereby.

XII

The foregoing ordinance excludes from its prohibition various types of signs including those used for governmental advertising, bench signs located at public transit bus stops, signs on vehicles such as buses and taxicabs, off-premise subdivision signs, and signs advertising products, service and facilities manufactured, produced, sold or offered on the property on whch the sign is located.

XIII

Plaintiff is informed and believes and on that basis alleges that the ordinance described above was enacted for the purpose of discriminating against the plaintiff and others in the outdoor advertising display business and in favor of those engaged in other advertising businesses in the City of San Diego including other outdoor advertising businesses such as those engaged in real estate development, and those which utilize bus bench signs and vehicular advertising. Plaintiff is further informed and believes and on that basis alleges that said ordinance was enacted solely and exclusively to accomplish aesthetic purposes.

XIV

Defendant and its agents, servants and employees have threatened to compel the removal and destruction of the signs owned by plaintiff in the City of San Diego pursuant to the above described ordinance and have announced their intention to enforce the provisions of said ordinance and totally eliminate plaintiff's business and property in the City of San Diego through a variety of procedures. En-

forcement of such ordinance will irreparably injure the business and property of plaintiff and subject plaintiff to a multiplicity of civil and criminal actions and impair the ability of plaintiff to conduct its business in areas other than the City of San Diego.

XV

The outdoor advertising business and the display signs owned and operated by plaintiff in the City of San Diego were in existence and were being legally maintained and operated prior to the effective date of the above-described ordinance. The prohibition of outdoor advertising structures in the City of San Diego is confiscatory in nature in that it purports to compel the destruction and elimination of a useful and existing commercial enterprise from the entire City of San Diego.

XVI

Neither the outdoor advertising business generally nor the displays owned by plaintiff in the City of San Diego constitute uses which are incompatible with other permitted uses of property in the same areas. Said business is in no way inimical to the health, safety, morals or general welfare of the City of San Diego or the residents thereof. The legislation prohibiting outdoor advertising displays and requiring the removal and elimination of property and business in existence when the legislation was enacted constitutes an arbitrary, capricious, confiscatory, inconsistent, unreasonable, unequal, unwarranted and oppressive exercise of power having no reasonable relationship to the public health, safety, welfare or morals or any other legitimate object of the police power.

XVII

That portion of the ordinance of the City of San Diego which requires the removal of signs within 500 feet of freeways and other similar highways and the "abatement schedule" which sets forth the removal dates for other signs is arbitrary, unreasonable, internally and intrinsically inconsistent, irrational, discriminatory, unrealistic and unrelated to the value of the property whch is to be taken without compensation. The periods specified are not commensurate with and have no reasonable relationship to the value, useful life or the income generated by the property being taken.

XVIII

The foregoing ordinance of the City of San Diego is unconstitutional, void, invalid, unenforceable and illegal on its face, as applied to plaintiff, and in the manner in which it will be enforced in each of the following respects, severally:

A. Said ordinance purports to authorize the taking of property and the destruction and prohibition of an existing legitimate, useful, profitable, and beneficial enterprise without compensation in violation of Sections 13 and 14 of Article I of the California Constitution and the Fifth and Fourteenth Amendments to the Constitution of the United States.

B. Said ordinance constitutes an unlawful exercise of the police power in that its objects have no reasonable relationship to the public health, safety, morals or welfare and such laws constitute an unreasonable, oppressive, confiscatory and unwarranted interference with property rights in the manner in which such laws are being and will be applied

and enforced in violation of Sections 13 and 14 of Article I of the California Constitution and the Fifth and Fourteenth Amendments to the Constitution of the United States.

C. Said ordinance purports to authorize the taking of private property without compensation for purely aesthetic purposes in violation of Sections 13 and 14 of Article I of the California Constitution and the Fifth and Fourteenth Amendments to the Constitution of the United States.

D. The purported "abatement" periods specified in said ordinance between the date of enactment and the date when valuable income-producing property must be eliminated and a successful useful and beneficial business must be destroyed is arbitrary and unreasonable and in violation of Sections 13 and 14 of Article I of the California Constitution and the Fifth and Fourteenth Amendments to the Constitution of the United States.

E. The City of San Diego has neither the power nor the jurisdiction to regulate the uses of property owned by the State of California, and, to that extent, the ordinance is inapplicable to the displays belonging to plaintiff and located on property owned by the State of California.

F. Said ordinance, on its face and as applied, deprives all persons, including plaintiff and all persons interested in advertising their messages on plaintiff's property, of their right to freedom of speech, press and expression in violation of Article I, Section 9 of the California Constitution and the First and Fourteenth Amendments to the Constitution of the United States.

G. Said ordinance, on its face and as applied, conflicts with Section 131 of Title 23 of the United States Code and

therefore violates Section 2 of Article VI of the Constitution of the United States.

H. Said ordinance is in direct conflict with and is prohibited by the provisions of the California Outdoor Advertising Act (Bus. & Prof. Code §5200 et seq.) and is, accordingly, beyond the power and jurisdiction of the City of San Diego.

I. Said ordinance, on its face and as applied, constitutes a denial to the plaintiff of equal protection of the laws in violation of the Fourteenth Amendment to the Constitution of the United States.

J. Said ordinance is vague, confusing, misleading, ambiguous and inconsistent and, as such, deprives plaintiff of due process of law in violation of the Fifth and Fourteenth Amendments to the Constitution of the United States.

K. Said ordinance constitutes an unlawful delegation of legislative and quasi-judicial power and, as such, deprives plaintiff of procedural and substantive due process and is unconstitutional and void.

XIX

An actual controversy has arisen and now exists between the plaintiff and defendant relative to their respective rights and duties in that plaintiff contends that the laws referred to herein are unconstitutional, void and unenforceable on their face and as applied to plaintiff for the reasons set forth herein, whereas defendant disputes such contentions and contends that said laws are valid and enforceable on their face and as applied to plaintiff.

XX

Plaintiff seeks a declaration of its rights with respect to the constitutionality, validity and enforceability of said ordinance, on its face and as applied to plaintiff. Such a declaration is necessary and appropriate in order that plaintiff may determine its rights with respect to its property and its business and avoid the elimination, prohibition and destruction of its property and its business and avoid the expense and inconvenience of a multiplicity of confusing, unnecessary, inequitable and repetitious actions.

XXI

The City of San Diego Municipal Code affords plaintiff no administrative relief from the enforcement of said unconstitutional, illegal and void ordinance.

WHEREFORE, plaintiff prays for judgment as follows:

(1) Declaring that all ordinances of the City of San Diego which purport to prohibit the maintenance and use of outdoor advertising displays in the City of San Diego and specifically Ordinance No. 10795 are unconstitutional and void on their face and as applied to the plaintiff.

(2) Declaring that plaintiff is entitled to continue to erect and maintain outdoor advertising displays constructed and owned by it in the City of San Diego.

(3) For a temporary restraining order, preliminary injunction and permanent injunction enjoining defendant from enforcing or attempting to enforce any and all provisions of the San Diego Municipal Code which prohibits the existence, erection, maintenance or use of outdoor advertising displays in the City of San Diego.

(4) For plaintiff's costs of suit and any other appropriate relief, writ or remedy as the court may deem just and proper.

Dated: April 26, 1972.

HILLYER & IRWIN
OSCAR F. IRWIN
and
GIBSON, DUNN & CRUTCHER
THEODORE B. OLSON

By /s/ THEODORE B. OLSON
Theodore B. Olson
Attorneys for Plaintiff

Answer to Complaint of Metromedia, Inc.
Filed May 28, 1972

SUPERIOR COURT
OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF SAN DIEGO

No. 332881

METROMEDIA, INC., a corporation, doing business as FOSTER AND KLEISER,

Plaintiff,

v.

CITY OF SAN DIEGO, and DOES I through XX, Inclusive,

Defendant.

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ANSWER TO COMPLAINT FOR DECLARATORY RELIEF; FOR TEMPORARY RESTRAINING ORDER; FOR PRELIMINARY INJUNCTION; AND FOR PERMANENT INJUNCTION

Defendant The City of San Diego, a municipal corporation, answers the complaint herein by admitting and denying as follows:

Answer to Complaint of Metromedia, Inc.

I

In answer to the allegations contained in paragraph I, defendant City admits that Metromedia, Inc. (hereinafter referred to as "Metromedia"), is a Delaware corporation duly authorized to and doing business in the State of California and is engaged in the outdoor advertising business in California and the City of San Diego through its Foster and Kleiser division.

In answer to the allegations on page 1, lines 30 to 32, inclusive, and on page 2, line 1, defendant has no information or belief sufficient to enable it to answer those allegations and placing its denial on that ground denies said allegations.

Defendant denies each and every other allegation contained in paragraph I.

II

In answer to the allegations of paragraph II, defendant admits each and every allegation contained therein.

III

In answer to the allegations of paragraph III, defendant has no information or belief sufficient to enable it to answer said allegations and placing its denial on that ground denies each and every allegation contained therein.

IV

In answer to the allegations of paragraph IV, defendant admits plaintiff was and now is the owner of numerous outdoor advertising displays located in the City of San Diego.

With respect to the allegations set forth at page 2, lines 20 to 22, inclusive, beginning with the word "Each" and

ending with the word "thereon," defendant has no information or belief sufficient to enable it to answer said allegations and placing its denial on that ground denies each and every allegation therein.

Defendant denies each and every other allegation contained in paragraph IV.

V

In answer to the allegations of paragraph V, defendant has no information or belief sufficient to enable it to answer the allegations on page 3, lines 7 and 8, beginning with the word "Plaintiff," and placing its denial on that ground denies each and every allegation contained therein.

Defendant denies each and every other allegation contained in paragraph V.

VI

In answer to the allegations of paragraph VI, defendant has no information or belief sufficient to enable it to answer said allegations and placing its denial on that ground denies each and every allegation contained therein.

VII

In answer to the allegations of paragraph VII, defendant has no information or belief sufficient to enable it to answer said allegations and placing its denial on that ground denies each and every allegation contained therein.

VIII

In answer to the allegations of paragraph VIII, defendant denies each and every allegation contained in paragraph VIII.

IX

In answer to the allegations of paragraph IX, defendant admits each and every allegation thereof.

X

In answer to the allegations of paragraph X, defendant has no information or belief sufficient to enable it to answer said allegations and placing its denial on that ground denies each and every allegation contained therein.

XI

In answer to the allegations of paragraph XI, defendant admits that on or about March 14, 1972, the City Council of The City of San Diego adopted Ordinance No. 10795 (New Series).

Defendant denies each and every other allegation contained in paragraph XI.

XII

In answer to the allegations of paragraph XII, defendant admits that San Diego Municipal Code Section 101.0700, paragraph F., as adopted by Ordinance No. 10795 (New Series), provides for certain exemptions from the sign regulations.

Defendant denies each and every other allegation contained in paragraph XII.

XIII

In answer to the allegations of paragraph XIII, defendant denies each and every allegation contained therein.

XIV

In answer to the allegations of paragraph XIV, defendant admits that its agents, servants and employees have

announced their intention to enforce the provisions of Ordinance No. 10795 (New Series), but defendant denies each and every other allegation contained therein.

XV

In answer to the allegations of paragraph XV, defendant denies each and every allegation contained therein.

XVI

In answer to the allegations of paragraph XVI, defendant denies each and every allegation contained therein.

XVII

In answer to the allegations of paragraph XVII, defendant denies each and every allegation contained therein.

XVIII

In answer to the allegations of paragraph XVIII, defendant denies each and every allegation contained therein.

XIX

In answer to the allegations of paragraph XIX, defendant admits the allegations therein.

XX

In answer to the allegations of paragraph XX, defendant denies each and every allegation contained therein.

XXI

In answer to the allegations of paragraph XXI, defendant denies each and every allegation contained therein.

WHEREFORE, defendant prays for judgment as follows:

1. That the temporary restraining order be dissolved;

2. That no preliminary injunction be issued;

3. That no permanent injunction be issued;

4. That Ordinance No. 10795 (New Series) and any other City ordinance in issue be declared valid on its face and as applied;

5. For costs of suit incurred herein; and

6. For such other and further relief as the court deems proper.

JOHN W. WITT, City Attorney

By /s/ C. ALAN SUMPTION
C. Alan Sumption, Deputy

Attorneys for Defendant

VERIFICATION

I am the attorney for the defendant The City of San Diego in the above entitled action; I have read the foregoing ANSWER TO COMPLAINT FOR DECLARATORY RELIEF; FOR TEMPORARY RESTRAINING ORDER; FOR PRELIMINARY INJUNCTION; and FOR PERMANENT INJUNCTION and know the contents thereof; and I certify that the same is true of my own knowledge except as to those matters which are therein stated upon information or belief and as to those matters I believe to be true.

I certify, under penalty of perjury that the foregoing is true and correct.

Dated this 26 day of May, 1972, at San Diego, California.

/s/ C. ALAN SUMPTION

Complaint of Pacific United Services Corp.
Filed May 10, 1972

SUPERIOR COURT
OF THE STATE OF CALIFORNIA

No. 333292

PACIFIC UNITED SERVICES CORP., a California corporation, doing business under the fictitious name and style of PACIFIC OUTDOOR ADVERTISING CO.,

Plaintiff,

vs.

THE CITY OF SAN DIEGO, a municipal corporation, THE CITY COUNCIL OF SAN DIEGO, VOYD BEIGHTS, Zoning Administrator of the City of San Diego and DOES 1 through 10, inclusive,

Defendants.

IVERSON, YOAKUM, PAPIANO & HATCH
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687-0711

Attorneys for Plaintiff

Plaintiff alleges:

1. Plaintiff, Pacific United Services Corp., is, and at all times herein mentioned was a corporation duly organized and existing under and by virtue of the laws of the State of California doing business within the City and County of San Diego under the fictitious name and style of Pacific

Outdoor Advertising Co., hereinafter referred to as: "Pacific Outdoor".

2. Defendant, The City of San Diego, is, and at all times herein mentioned was a municipal corporation located within the County of San Diego, organized and existing under, and by virtue of the Constitution and laws of the State of California.

3. Defendant, The City Council of the City of San Diego is and at all times herein mentioned was the legislative body of the City of San Diego and in said form caused the enactment of the hereinafter specified ordinance and occasioned the damages complained of herein.

4. Defendant, Voyd Beights is, and at all times herein mentioned was the Zoning Administrator of the City of San Diego and is the person charged by the laws of said city with administering and enforcing the hereinafter specified ordinance.

5. The true names and capacities of the defendants designated herein as Does 1 to 10, inclusive, are now unknown to plaintiff who therefore sues said defendants by such fictitious names; plaintiff will ask leave of court to amend this complaint to show the true names and capacities of said defendants when same have been ascertained.

6. At all times therein mentioned there was, and is now a comprehensive zoning plan in effect within the City of San Diego whereby all land area within said city is divided into zones of permitted uses, including, but not limited to industrial and commercial activities.

7. At all times herein mentioned there were, and are now areas of land use within the City of San Diego devoted to heavy manufacturing, military and governmental activities, transportation and wholesale trade, among other uses.

8. Plaintiff, Pacific Outdoor Advertising, together with its predecessor in interest, the Cordtz Company, has been continuously engaged in the business of outdoor advertising within the City of San Diego for more than 60 years.

9. The activity upon which plaintiff's business depends for its continued existence is the construction and maintenance of off-premises outdoor advertising displays at various locations within the City of San Diego.

10. Plaintiff now owns and maintains 624 such signs within the City of San Diego each of which was constructed and is now maintained in compliance with all state and local laws and ordinances.

11. At all times herein mentioned each of said 624 signs was, and is now located within a district zoned for commercial or industrial use, or otherwise suitable and appropriate for purposes of off-premises outdoor advertising.

12. At all times herein mentioned, many of said 624 signs were, and are now located within 660 feet, and others within 500 feet, from the edge of the right-of-way of interstate or federal aid primary highways within the City of San Diego and are designed to be viewed therefrom.

13. At all times herein mentioned said business of plaintiff, including its construction and maintenance of said 624 signs, is and was lawful, not inherently harmful or otherwise detrimental to the general welfare of the residents and visitors to the City of San Diego.

14. On or about March 14, 1972, defendant City Council of the City of San Diego enacted Ordinance No. 10795, entitled: General Sign Regulations—Sec. 101.0700—Prohibition and Abatement of Outdoor Advertising Display Signs, a true copy of said ordinance is attached hereto, marked Exhibit "A" and incorporated by reference herein.

15. The purpose and effect of said ordinance is to prohibit the further construction and maintenance of off-premises outdoor advertising signs; to prohibit the further use of real property for off-premises outdoor advertising purposes; to prohibit the pursuit of the business of off-premises outdoor advertising; and to require the removal of all existing off-premises outdoor advertising signs.

16. Under the terms of said ordinance, all existing off-premises outdoor advertising signs within the City of San Diego are to be removed in accordance with an "Abatement Schedule" set forth therein, whereby:

(1) All off-premises outdoor advertising signs located within 500 feet of certain freeways and highways, including interstate and federal aid primary highways, must be removed within 90 days following the effective date of said ordinance;

(2) All remaining off-premises signs must be removed in compliance with a graduated schedule requiring the

total elimination of all such signs within four years from the effective date of said ordinance.

(3) No compensation is paid by defendants for requiring the removal of any existing off-premises outdoor advertising sign.

17. On or about April 13, 1972, said ordinance went into full force and effect and is now being enforced by defendants.

18. Each of said 624 signs belonging to plaintiff has a reasonable replacement value in excess of $2,000, a remaining economic life in excess of 25 years and the aggregate value of said structures to plaintiff's overall business is in excess of many millions of dollars.

19. Under the terms of said ordinance, defendants claim the right to, and do on account thereof, threaten to remove the aforesaid 624 outdoor advertising signs should plaintiff fail to so remove said signs in compliance with the provisions of said ordinance.

20. Under the terms of said ordinance, any sign deemed to be in violation thereof shall be removed by the owner of the property where the sign is located or ultimately, by defendant if plaintiff should fail to do so.

21. Under the terms of said ordinance, defendant Beights as Zoning Administrator, may, in his discretion create a civil liability against the owner of any sign or the owner of the property upon which such sign is located, should said defendant elect to cause its removal in the manner set forth in Paragraph 20, herein.

22. Said ordinance constitutes a portion of the San Diego Municipal Code; Section 11.12 thereof provides that failure to comply with any of the provisions of said Code is punishable as a misdemeanor.

23. Under the terms of said ordinance, other forms of outdoor advertising are excluded from its prohibition, including advertisements on taxi-cabs, buses, bus-benches, off-premises real estate subdivision signs, and all on-premises outdoor advertising signs.

24. Should defendants continue to enforce said ordinance, plaintiff will be prevented from engaging in the business of outdoor advertising; plaintiff will suffer the loss of its property, business and employees; and will, on account thereof, suffer substantial monetary damages and irreparable injury and loss; plaintiff will further become subject to the multiplicity of civil and criminal prosecution by defendants.

25. An actual controversy has arisen and now exists between plaintiff and defendants relative to their respective rights and duties herein. Plaintiff contends that said ordinance is invalid and unconstitutional on its face and as applied, as more particularly set forth herein; while defendants contend that said ordinance is valid and constitutional. Plaintiff desires to continue to pursue the business of outdoor advertising but is fearful of the consequences alleged herein and accordingly brings this proceeding as the only reasonable method of challenging the validity thereof. Said ordinance is invalid, unconstitutional and unenforceable on each of the following grounds:

A. Defendants' total prohibition of off-premises outdoor advertising signs within the City of San Diego bears no

reasonable relationship to any legitimate object of police power and accordingly, said ordinance constitutes an unreasonable and arbitrary exercise thereof in violation of the 5th and 14th Amendments to the United States Constitution and Article I, Sections 13 and 14 of the California Constitution.

B. Defendants' total prohibition of off-premises outdoor advertising signs within the City of San Diego as a means to achieve the purported objects of the ordinance herein is harsh, unnecessary, arbitrary and unreasonable and therefore said ordinance is in violation of the 5th and 14th Amendments to the United States Constitution and Article I, Sections 13 and 14 of the California Constitution.

C. The purposes and intent of said ordinance are not legitimate objects of defendants' police power.

D. Said ordinance purports to authorize the taking of plaintiff's vested property rights without compensation and accordingly, said ordinance denies plaintiff the right of due process in violation of the 5th and 14th Amendments to the United States Constitution and Article I, Sections 12 and 13 of the California Constitution.

E. The business of Outdoor Advertising, including the construction and maintenance of off-premises outdoor advertising signs, is an established segment of the National Economy and by prohibiting such signs within the City of San Diego defendants by said ordinance have created an unnecessary and unreasonable obstruction to, and burden upon interstate commerce; said ordinance therefore violates Article VI of the United States Constitution.

F. By totally prohibiting off-premises outdoor advertising signs within the City of San Diego said ordinance

is in direct conflict with Title 23 of the United States Code, Section 131 thereof, and accordingly said ordinance violates Article VI of the Constitution of the United States.

G. By totally prohibiting off-premises outdoor advertising signs within the City of San Diego, said ordinance is in direct conflict with Business & Professions Code, Section 5200 et seq., and is therefore in violation of Article XI, Section 11 of the California Constitution.

H. Outdoor advertising signs carry messages which constitute protected free speech which, by reason of defendants' ordinance, has been arbitrarily restrained, abridged and denied; all in violation of the 1st and 14th Amendments to the United States Constitution and Article I, Section 9 of the California Constitution.

I. Insofar as said ordinance applies to off-premises outdoor advertising signs located within 660 feet from the edge of Interstate or federal aid primary highways, the purported objects of said ordinance have been preempted by Title 23 of the United States Code, Section 131 et seq.

J. Insofar as said ordinance applies to off-premises outdoor advertising signs located within 660 feet from the edge of interstate of federal aid primary highways, the purported objects of said ordinance have been preempted by Business & Professions Code, Section 5200 et seq., and therefore violates Article XI, Section 11 of the California Constitution.

K. Insofar as said ordinance applies to plaintiff's off-premises outdoor advertising signs located within 500 feet from the edge of interstate and federal aid primary highways, enforcement of said ordinance will deprive plaintiff of its vested right to $589,742 in compensation from the

State of California pursuant to Title 23 of the United States Code, Section 131, and Business & Professions Code, Section 5200 et seq.; according, said ordinance purports to authorize the taking of plaintiff's property without just compensation in violation of the 5th and 14th Amendments to the Constitution of the United States and Article I, Sections 13 and 14 of the California Constitution.

L. Insofar as said ordinance purports to authorize the removal of plaintiff's off-premises outdoor advertising signs located within 500 feet from the edge of interstate or federal aid primary highways, without compensation, enforcements of said ordinance will, by reason of Title 23, United States Code, Section 131, subject the State of California to the loss of ten per cent of the highway funds that would otherwise be allocated to it by the Federal Government; such legislation is, accordingly, beyond the municipal police power of defendants.

M. The abatement schedule set forth in said ordinance violates the 5th and 14th Amendments to the United States Constitution and Article I, Sections 13 and 14 of the California Constitution in that the purported amortization period as applied to plaintiff's signs is arbitrary, unreasonable and otherwise confiscatory.

N. The abatement schedule set forth in said ordinance violates the 5th and 14th Amendments to the United States Constitution and Article I, Sections 13 and 14 of the California Constitution in that the purported amortization period, as same effects a closing of plaintiff's business, is arbitrary, unreasonable and otherwise confiscatory.

O. Said ordinance on its face, and as applied, constitutes an unreasonable and arbitrary distinction between

similarly situated classes of individuals, and thereby denies plaintiff equal protection of the laws in violation of the 14th Amendment to the Constitution of the United States.

P. Said ordinance violates the 5th and 14th Amendments to the United States Constitution because its terms are so vague that men of common intelligence must necessarily guess at its meaning and differ as to its application.

Q. Plaintiff has heretofore entered into lawful and profitable contracts with third persons to display their messages on plaintiff's outdoor advertising signs located within the City of San Diego; at all times herein mentioned said contracts were and are now executory in nature, extending into the future for various lengths of time. Through said ordinance defendants seek to unlawfully take, impair, obstruct and destroy plaintiff's rights in said contract in violation of Article I, Section 10 of the United States Constitution and the 5th and 14th Amendments thereto; and Article I, Sections 13, 14 and 16 of the California Constitution.

26. On or about April 2, 1972, defendants' attorney, John Witt, stated on behalf of the City of San Diego:

> "Now we have billboard regulations and a policy saying we're going to phase out this type of activity . . . the decision by the council dictates that there should be a vigorous effort to get all the illegal signs down."

27. Defendants intend to, and will, unless restrained by an order of this court, cause the removal of plaintiff's aforementioned signs pursuant to the ordinance complained of herein.

28. As a direct and proximate result of the conduct of defendants, and each of them, and the conditions wrongfully created thereby, plaintiff has suffered, and will continue to suffer irreparable injury and monetary damages to its vested property rights, the exact amount of which is now unknown. Leave of court will be sought to amend this complaint and insert the correct amount of monetary damages at such time as they are ascertained.

29. Plaintiff has exhausted all available administrative remedies to be pursued by it and has no plain, speedy or otherwise adequate remedy at law.

WHEREFORE, plaintiff prays for a declaratory judgment as follows:

1. That this court declare the respective rights and duties of plaintiff and defendants with respect to said ordinance and that it be declared and adjudged that Ordinance No. 10795 is invalid and unconstitutional on its face and as applied to plaintiff;

2. That during the pendency of this litigation, defendants and each of them be enjoined and restrained from further enforcing or attempting to enforce said ordinance;

3. For a temporary restraining order;

4. For damages according to proof;

5. For costs of suit incurred herein.

IVERSON, YOAKUM, PAPIANO & HATCH

By /s/ WILLIAM S. CHRISTOPHER
William S. Christopher
Attorneys for Plaintiff

Answer to Complaint of Pacific United Services Corp. Filed May 26, 1972

SUPERIOR COURT
OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF SAN DIEGO

No. 333292

PACIFIC UNITED SERVICES CORP., a California corporation, doing business under the fictitious name and style of PACIFIC OUTDOOR ADVERTISING CO.,

Plaintiff,

v.

THE CITY OF SAN DIEGO, a municipal corporation, THE CITY COUNCIL OF SAN DIEGO, BOYD [sic] BEIGHTS, Zoning Administrator of the City of San Diego and DOES 1 through 10, inclusive,

Defendants.

JOHN W. WITT, City Attorney
C. ALAN SUMPTION, Deputy City Attorney
City Administration Building
Community Concourse
202 C Street
San Diego, California 92101
Telephone: 236-6220

Attorneys for Defendants

Answer to Complaint of Pacific United Services Corp.

ANSWER TO COMPLAINT FOR DECLARATORY RELIEF AND INJUNCTION

Defendants The City of San Diego, a municipal corporation, The City Council of The City of San Diego, and Voyd Beights, Zoning Administrator of The City of San Diego, answer the complaint herein by admitting and denying as follows:

I

In answer to the allegations of paragraph I, defendants have no information or belief sufficient to enable them to answer said allegations and placing their denial on that ground deny each and every allegation contained therein.

II

In answer to the allegations of paragraph II, defendants admit each and every allegation contained therein.

III

In answer to the allegations of paragraph III, defendants admit the defendant City Council of The City of San Diego is the legislative body of The City of San Diego, and in that capacity, enacted Ordinance No. 10795 (New Series).

Defendants deny each and every other allegation contained in paragraph III.

IV

In answer to the allegations of paragraph IV, defendants admit each and every allegation contained therein.

V

In answer to the allegations of paragraph V, defendants have no information or belief sufficient to enable them to

answer said allegations and placing their denial on that ground deny each and every allegation contained therein.

VI

In answer to the allegations of paragraph VI, defendants admit each and every allegation contained therein.

VII

In answer to the allegations of paragraph VII, defendants admit each and every allegation contained therein.

VIII

In answer to the allegations of paragraph VIII, defendants have no information or belief sufficient to enable them to answer said allegations and placing their denial on that ground deny each and every allegation contained therein.

IX

In answer to the allegations of paragraph IX, defendants have no information or belief sufficient to enable them to answer said allegations and placing their denial on that ground deny each and every allegation contained therein.

X

In answer to the allegations of paragraph X, defendants have no information or belief sufficient to enable them to answer the allegations on page 2, line 32, and page 3, line 1, ending with the word "San Diego," and placing their denial on that ground deny each and every allegation contained therein.

Defendants deny each and every other allegation contained in paragraph X.

Answer to Complaint of Pacific United Services Corp.

XI

In answer to the allegations of paragraph XI, defendants deny each and every allegation contained therein.

XII

In answer to the allegations of paragraph XII, defendants admit that some of plaintiff's signs are within 500 feet from the edge of interstate or federal-aid primary highways within San Diego and are designed to be viewed therefrom.

Defendants have no information or belief sufficient to enable them to answer the remaining allegations of paragraph XII, and placing their denial on that ground deny each and every remaining allegation therein.

XIII

In answer to the allegations of paragraph XIII, defendants deny each and every allegation contained therein.

XIV

In answer to the allegations of paragraph XIV, defendants admit each and every allegation contained therein.

XV

In answer to the allegations of paragraph XV, defendants admit the effect of said ordinance is to prohibit the further construction and maintenance of certain off-premises outdoor advertising signs; to prohibit the further use of real property for off-premises outdoor advertising purposes; and to require the removal of all existing off-premises outdoor advertising signs.

Defendants deny each and every other allegation contained in paragraph XV.

XVI

In answer to the allegations of paragraph XVI, defendants admit each and every allegation contained therein.

XVII

In answer to the allegations of paragraph XVII, defendants admit each and every allegation contained therein.

XVIII

In answer to the allegations of paragraph XVIII, defendants have no information or belief sufficient to enable them to answer said allegations and placing their denial on that ground deny each and every allegation contained therein.

XIX

In answer to the allegations of paragraph XIX, defendants admit each and every allegation contained therein.

XX

In answer to the allegations of paragraph XX, defendants admit each and every allegation contained therein.

XXI

In answer to the allegations of paragraph XXI, defendants admit each and every allegation contained therein.

XXII

In answer to the allegations of paragraph XXII, defendants admit each and every allegation contained therein.

XXIII

In answer to the allegations of paragraph XXIII, defendants admit that certain signs are exempt from the provisions of Ordinance No. 10795 (New Series), by paragraph "F." of San Diego Municipal Code, Section 101.0700.

Defendants deny each and every other allegation contained in paragraph XXIII.

XXIV

In answer to the allegations of paragraph XXIV, defendants admit that if plaintiff violates the provisions of Ordinance No. 10795 (New Series), it will become subject to civil and criminal lawsuits by defendants.

Defendants deny each and every other allegation contained in paragraph XXIV.

XXV

In answer to the allegations of paragraph XXV, defendants admit the allegations at page 5, lines 20 to 25, inclusive, ending with the word "constitutional," but defendants deny each and every remaining allegation therein.

XXVI

In answer to the allegations of paragraph XXVI, defendants have no information or belief sufficient to enable it to answer said allegations and placing its denial on that ground denies each and every allegation contained therein.

XXVII

In answer to the allegations of paragraph XXVII, defendants admit defendants intend to and will cause the

removal of any signs in violation of the provisions of Ordinance No. 10795 (New Series), but deny each and every other allegation therein.

XXVIII

In answer to the allegations of paragraph XXVIII, defendants deny each and every allegation in paragraph XXVIII.

XXIX

In answer to the allegations of paragraph XXIX, defendants deny each and every allegation in paragraph XXIX.

WHEREFORE, defendants pray for judgment as follows:

1. That the temporary restraining order be dissolved;

2. That no preliminary injunction be issued;

3. That no permanent injunction be issued;

4. That the court declare Ordinance No. 10795 (New Series) valid and constitutional on its face and as applied;

5. That plaintiff take nothing by this action;

6. For costs of suit incurred herein; and

7. For such other and further relief as the court deems proper.

JOHN W. WITT, City Attorney

By /s/ C. ALAN SUMPTION
C. Alan Sumption, Deputy

Attorneys for Defendant

Answer to Complaint of Pacific United Services Corp.

VERIFICATION

I am the attorney for the defendant The City of San Diego in the above entitled action; I have read the foregoing ANSWER TO COMPLAINT FOR DECLARATORY RELIEF AND INJUNCTION and know the contents thereof; and I certify that the same is true of my own knowledge except as to those matters which are therein stated upon information or belief and as to those matters I believe to be true.

I certify, under penalty of perjury that the foregoing is true and correct.

Dated this 26 day of May, 1972, at San Diego, California.

/s/ C. ALAN SUMPTION

* * * * *

Pursuant to a stipulation of the parties and Order of the Superior Court dated April 29, 1974, an Amended Complaint was filed reflecting the substitution of new party plaintiff Pacific Outdoor Advertising Co., Inc., the successor to Pacific United Services Corp. The Order of the Superior Court further provided that all of the material allegations of the Amended Complaint were to be deemed denied by defendants. (See Clerk's Transcript at 518-20.)

Joint Stipulation of Facts
Filed December 6, 1974

SUPERIOR COURT
OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF SAN DIEGO

No. 332881

METROMEDIA, INC., a corporation, doing business as FOSTER AND KLEISER,

Plaintiff,

v.

CITY OF SAN DIEGO, a municipal corporation, and DOES I through XX, Inclusive,

Defendants.

PACIFIC OUTDOOR ADVERTISING CO., INC., an Arizona corporation,

Plaintiff,

v.

THE CITY OF SAN DIEGO, a municipal corporation, THE CITY COUNCIL OF SAN DIEGO, BOYD BEIGHTS, Zoning Administrator of the City of San Diego and DOES 1 through 10, inclusive,

Defendants.

(Consolidated)

JOINT STIPULATION OF FACTS

The parties to this litigation are filing cross-motions for summary judgment. This Stipulation of Facts is entered

into for the purpose of these motions and for any judgment thereon or appeals therefrom and for no other purpose. The parties agree that the facts specified herein are true for said purposes only and none of the parties hereto shall be bound thereby for any other purposes.

STIPULATED FACTS

1. On March 14, 1972, the City Council of the City of San Diego adopted Ordinance No. 10795, a true, correct and complete copy of which is attached hereto and incorporated herein by reference as Exhibit A.

2. If enforced as written, Ordinance No. 10795 will eliminate the outdoor advertising business in the City of San Diego.

3. The City of San Diego, with a population of 750,000 people,* is the second most populated city in the State of California, the most populated state in the nation.

4. The City of San Diego is the seat of the county government of the County of San Diego. The County has a population in excess of 1,500,000 persons.**

5. The City of San Diego contains approximately 320 square miles or 204,800 acres.

6. The City of San Diego is multi-faceted, containing beaches, hills, residential areas, parks, a major seaport and naval base, a substantial commercial area, hundreds of

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* As of April, 1974.

** As of April, 1974.

miles of streets, highways and freeways, a large industrial area, a major airport and numerous major industries.

7. The citizens of the City of San Diego derive their livelihood from a variety of sources, including retail businesses, heavy industry, commercial centers, tourist services, agriculture, government contracts, wholesale supplies and a variety of services.

8. The homes, commercial structures and industrial facilities of the City of San Diego are of all vintages, old and new. Some sections of the City of San Diego are scenic, some blighted, some containing strips of vehicle related commercial uses, some contain new and attractive office buildings, some functional industrial development and some areas contain older but useful commercial establishments.

9. Approximately 13% of the City of San Diego is zoned for residential purposes, 1.4% for commercial uses, 1.4% industrial, 8.5% for streets and highways, 20% for public and semi-public uses and the balance is vacant or used for agricultural purposes.*

10. The City of San Diego General Plan adopted in 1967 indicates its citizens found employment substantially as follows in the year 1962:**

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* These figures are approximate figures for 1967, the date of the San Diego General Plan. The same general proportions may be considered valid for all other periods relevant to this litigation.

** Certain minor fractions have been omitted from this table. While the fractions specified have undoubtedly fluctuated over the years, such changes would be of such magnitude as not to be material to this motion. Therefore, these figures may be taken as true for all periods relevant to this litigation.

Agriculture	1.6%
Construction	6.6%
Manufacturing	22.4%
Transportation, Communication and Utilities	4.7%
Wholesale Trade	3.2%
Retail Trade	17.5%
Finance, Insurance and Real Estate	4.5%
Services	19.2%
Government	19.7%

11. The City of San Diego General Plan of 1967 projected a 1985 population of almost double that of 1967.

12. Both of the plaintiffs are companies legally engaged in the outdoor advertising business in the City of San Diego and the State of California (Defendant, of course, contends that Ordinance No. 10795 is legal and valid and that plaintiffs are currently in violation of this Ordinance. Accordingly, to this extent, defendant does not admit that plaintiffs are at this time "legally engaged in business in the City of San Diego."

13. Each of the plaintiffs are the owners of a substantial number of outdoor advertising displays (approximately 500 to 800) in the City of San Diego.

14. Substantially all of the displays owned by plaintiffs are located on property leased by the owners thereof to

the plaintiffs for the purposes of maintaining outdoor advertising displays thereon.*

15. Each of the displays were legally erected in full compliance with all applicable municipal and state laws and are in full compliance with such laws except for the contested legality of Ordinance No. 10795.

16. The cost of producing and erecting each display was substantial.

17. The displays have varying values depending upon their size, nature and location.

18. Each of the displays has a fair market value, as a part of an income-producing system, of between $2,500 and $25,000.

19. Each display has a remaining useful income-producing life in excess of 25 years.

20. All of the signs owned by plaintiffs in the City of San Diego are located at areas zoned for commercial and industrial purposes.

21. Outdoor advertising is a means of communication and a media for the expression of ideas.

22. There is a difference between the outdoor advertising business and "on-site" or business signs. On-site signs advertise businesses, goods or services available on the property on which the sign is located. On the other hand, the outdoor advertising businesses lease real property and

* A few may be located on property owned by the plaintiffs.

erect signs thereon which are made available to national and local advertisers for commercial, political and social messages. Outdoor advertising is different from on-site advertising in that:

(a) The outdoor advertising sign seldom advertises goods or services sold or made available on the premises on which the sign is located.

(b) The outdoor advertising sign seldom advertises products or services sold or made available by the owner of the sign.

(c) The outdoor advertising sign is, generally speaking, made available to "all-comers", in a fashion similar to newspaper or broadcasting advertising. It is a forum for the communication of messages to the public.

(d) The copy of the outdoor advertising sign changes, usually monthly. For example, a particular sign may advertise a local savings and loan association one month, a candidate for mayor the next month, the San Diego Zoo the third month, a new car the fourth month, and a union grievance the fifth month.

23. Outdoor advertising is available for all forms of advertising messages. For example, it has been used in the City of San Diego to advertise national and local products, goods and services, new products being introduced to the consuming public, to publicize the "City in motion" campaign of the City of San Diego, to communicate messages from candidates for municipal, state and national offices, including candidates for judicial office, to propose marriage, to seek employment, to encourage the use of seat belts, to denounce the United Nations, to seek support for

Prisoners of War and Missing in Action, to promote the United Crusade and a variety of other charitable and socially-related endeavors and to provide directions to the traveling public.

24. Outdoor advertising is customarily purchased on the basis of a presentation or campaign requiring multiple exposure. Usually a large number of signs in a variety of locations are utilized to communicate a particular advertiser's message. An advertiser will generally purchase a "showing" which would involve the utilization of a specific number of signs advertising the same message in a variety of locations throughout a metropolitan area. Each separate sign provides exposure of various portions of the populace and each sign thereby forms an integral part of an interdependent whole. As a result, each sign in addition to producing income in and of itself, lends value to the entire system. Therefore, each sign has a value substantially more as a part of the system than it does separately. The value of each sign as a part of an overall system is not readily susceptible to precise measurement.

25. Outdoor advertising is presented in two basic standardized forms. A "poster panel" is a 12-foot by 24-foot sign on which a pre-printed message is posted, in sheets. A "painted bulletin" is generally a 14-foot by 48-foot sign which contains a hand painted message. The message will remain in one place for a period of time, usually a month, and will then be disassembled and replaced by another message while the first message is moved to another sign. In this way, the same hand painted message will be moved throughout a metropolitan area over a six-month or twelve-month period.

26. Plaintiffs' outdoor advertising displays produce substantial gross annual income.

27. Plaintiffs' outdoor advertising displays produce income to a variety of segments of the national, state and local economy and stimulate the flow of trade and commerce. Land owners and advertising agencies receive income from outdoor advertising.

28. Outdoor advertising increases the sales of products and produces numerous direct and indirect benefits to the public. Valuable commercial, political and social information is communicated to the public through the use of outdoor advertising. Many businesses and politicians and other persons rely upon outdoor advertising because other forms of advertising are insufficient, inappropriate and prohibitively expensive.

29. Enforcement of Ordinance No. 10795, in addition to eliminating outdoor advertising within the City of San Diego, will adversely affect plaintiffs' businesses outside the City of San Diego in that many national or state-wide advertisers will be inclined to select other media capable of communicating with a wider segment of the consuming public, including San Diego, rather than selecting outdoor advertising which would be unable to communicate with the citizens of San Diego.

30. Plaintiffs and their predecessors have engaged in outdoor advertising in the City of San Diego for more than 60 years.

31. Many of the plaintiffs' signs are within 660 feet and others are within 500 feet of Interstate or Federal Aid

Primary highways and are designed to be viewed therefrom.

32. Enforcement of Ordinance No. 10795 will prevent plaintiffs from engaging in the outdoor advertising business in the City of San Diego and will cause plaintiffs to suffer substantial monetary losses.

33. Plaintiffs have entered into contracts to display messages on their respective signs in the City of San Diego; said contracts extending for various periods of time.

34. "The amortization provisions" of Ordinance No. 10795 have no reasonable relationship to the fair market value, useful life or income generated by the signs and were not designed to have such a relationship.

Dated: November 21, 1974

GIBSON, DUNN & CRUTCHER
THEODORE B. OLSON

and

HILLYER & IRWIN
OSCAR F. IRWIN

By /s/ THEODORE B. OLSON
Theodore B. Olson

Attorneys for Plaintiff
Metromedia, Inc.

Joint Stipulation of Facts

SNELL & WILMER
JOHN J. BOUMA
GUY GELBRON

and

HIGGS, FLETCHER & MACK
JOE N. TURNER

By /s/ JOHN J. BOUMA
John J. Bouma

Attorneys for Plaintiff
Pacific Outdoor
Advertising Co., Inc.

JOHN W. WITT
City Attorney
C. ALAN SUMPTION
Deputy City Attorney

By /s/ C. ALAN SUMPTION
C. Alan Sumption

Attorneys for Defendant
City of San Diego

[Introductory listing of counsel omitted in printing]

Plaintiffs' Joint Motion for Summary Judgment
Filed December 6, 1974

SUPERIOR COURT
OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SAN DIEGO

METROMEDIA, INC., a corporation, doing business as FOSTER AND KLEISER,

Plaintiff,

v.

CITY OF SAN DIEGO, a municipal corporation, and DOES I through XX, inclusive,

Defendants.

No. 332881
JOINT MOTION BY
PLAINTIFFS FOR
SUMMARY JUDGMENT

PACIFIC OUTDOOR ADVERTISING CO., INC., an Arizona corporation,

Plaintiff,

v.

THE CITY OF SAN DIEGO, a municipal corporation, THE CITY COUNCIL OF SAN DIEGO, VOYD BEIGHTS, Zoning Administrator of the City of San Diego and DOES 1 through 10, inclusive,

Defendants.

No. 333292

(Consolidated)

Plaintiffs' Joint Motion for Summary Judgment

TO THE DEFENDANT CITY OF SAN DIEGO AND ITS ATTORNEYS OF RECORD:

PLEASE TAKE NOTICE that on February 28, 1975, 1:30 p.m. in Department 11 of the above-captioned Court located at 220 West Broadway, San Diego, California, plaintiffs PACIFIC OUTDOOR ADVERTISING CO., INC. and METROMEDIA, INC. will move the Court for an Order of Summary Judgment in this action in their favor as to each and every issue involved in this action or as to any of said issues. Said motion will be made pursuant to the provisions of Section 437c of the California Code of Civil Procedure.

The foregoing motion will be made and based upon this notice, upon the pleadings, records and files in this action, the Joint Stipulation of Facts filed herein, the Plaintiffs' Joint Memorandum of Points and Authorities filed concurrently herewith and such other and further materials which may be presented by the plaintiffs at or prior to the hearing on said motion.

DATED: November 21, 1974.

GIBSON, DUNN & CRUTCHER
THEODORE B. OLSON

and

HILLYER & IRWIN
OSCAR F. IRWIN

By /s/ THEODORE B. OLSON
Theodore B. Olson

Attorneys for Plaintiff
Metromedia, Inc.

Plaintiffs' Joint Motion for Summary Judgment

SNELL & WILMER
JOHN J. BOUMA
GUY GELBRON

and

HIGGS, FLETCHER & MACK
JOE N. TURNER

By /s/ JOHN J. BOUMA
John J. Bouma
Attorneys for Plaintiff
Pacific Outdoor
Advertising Co., Inc.

[Introductory listing of counsel omitted in printing]

Defendant's Notice of Motion and Motion for Summary Judgment Filed December 6, 1974

SUPERIOR COURT
OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF SAN DIEGO

No. 332881

METROMEDIA, INC., a corporation, doing business as FOSTER AND KLEISER,

Plaintiff,

v.

CITY OF SAN DIEGO, a municipal corporation, and DOES I through XX, inclusive,

Defendants.

JOHN W. WITT,
City Attorney

C. ALAN SUMPTION,
Deputy

City Administration Building
202 C Street
San Diego, California 92101
Telephone: 236-6220

Attorneys for Defendant.

Defendant's Motion for Summary Judgment

NOTICE OF MOTION AND MOTION FOR SUMMARY JUDGMENT BY DEFENDANT OR FOR ORDER SPECIFYING ISSUES WITHOUT SUBSTANTIAL CONTROVERSY; POINTS AND AUTHORITIES AND SUPPORTING DECLARATIONS.

To plaintiff, Metromedia, Inc., and its attorneys of record:

PLEASE TAKE NOTICE that on Friday, February 28, 1975, at 1:30 p.m., or as soon thereafter as the matter can be heard, at the Courtroom of Department Eleven, at 220 West Broadway, San Diego, California 92101, defendant City of San Diego will move the court for entry of summary judgment in favor of defendant and against plaintiff, as prayed for in the answer.

This motion is made on the ground that there is no triable issue of material fact and the action has no merit, in that the subject ordinance constitutes a valid exercise of the police power and is not unconstitutional on its face or as applied.

This motion is based on this notice, the pleadings and records and files in this action, and on the supporting memorandum of points and authorities and declarations, and on matters subject to judicial notice. A summary of evidentiary matters relied upon, including those matters to be judicially noticed, is contained in the attached memorandum of points and authorities beginning at page 9.

Dated: December 5, 1974

JOHN W. WITT, City Attorney

By /s/ C. ALAN SUMPTION
C. Alan Sumption, Deputy
Attorneys for Defendant
City of San Diego

Excerpts from Reporter's Transcript of Proceedings, February 28, 1975

SUPERIOR COURT
OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF SAN DIEGO

DEPT. 11 HON. JACK R. LEVITT, JUDGE

No. 332881

METROMEDIA, INC., a corporation, doing business as FOSTER AND KLEISER,

Plaintiff,

v.

CITY OF SAN DIEGO, a municipal corporation, and DOES I through XX, inclusive,

Defendants.

No. 333292

PACIFIC OUTDOOR ADVERTISING CO., INC., an Arizona corporation,

Plaintiff,

v.

THE CITY OF SAN DIEGO, a municipal corporation, THE CITY COUNCIL OF SAN DIEGO, BOYD BEIGHTS, Zoning Administrator of the City of San Diego and DOES 1 through 10, inclusive,

Defendants.

Excerpts from Reporter's Transcript, February 28, 1975

Reporter's Transcript

Friday, February 28, 1975

APPEARANCES:

Attorneys for Plaintiff

METROMEDIA, INC.:
GIBSON, DUNN & CRUTCHER
By: Theodore B. Olson
and
HILLYER & IRWIN
By: Oscar F. Irwin

Attorneys for Plaintiff

PACIFIC OUTDOOR ADVERTISING CO., INC.:
SNELL & WILMER
By: John J. Bouma, Guy Gelbron
and
HIGGS, FLETCHER & MACK
By: Joe N. Turner

Attorneys for Defendant

CITY OF SAN DIEGO:

JOHN W. WITT, City Attorney
C. ALAN SUMPTION, Deputy

JEAN A. YARNELL, CSR
Official Reporter
Superior Court

[1] *San Diego California, Friday, February 28, 1975; 1:30 p.m.*

* * * * *

Excerpts from Reporter's Transcript, February 28, 1975

[16] • • •

THE COURT: Again, I don't wish to interrupt your thought processes, but I am still not satisfied as to your position on the point I'm raising, and that is how do I know in this comparative process that as a matter of law the comparison is as you suggest? I mean, you believe it and you strongly urge it, but the Court has to weigh the factors, and if that's a litigable issue of fact, then the Court cannot grant the summary judgment motion, so explain to me why that's not a triable issue of fact. That's all I am asking.

MR. GELBRON: Yes, sir, your Honor. I think that it would not be a misstatement to state that if you want it to control confusing and excessive signs, you could do it by regulation as well as prohibition, but also by regulation by passing an ordinance as stated, all excessive and confusing signs are eliminated and must be removed. As a matter of law, the California Supreme Court has stated that the law does not tolerate the prohibition of something which may be regulated in such a way as to overcome any evils which may be incidentally connected with it. The same principle has been asserted and advanced by the California Supreme Court in Varney & Green vs. Williams, and the opinion, which goes through an analysis of what disadvantages and certain aspects of billboards which should be regulated, are not regulated in the ordinance which the [17] Court was dealing with in Varney & Green which is almost identical to the one here except the private loss is tremendously more, concluded after notifying that it wasn't a regulatory ordinance, stated as follows: As a matter of law, the ordinance in question doesn't attempt such regulation but undertakes to absolutely forbid direction or maintenance of any billboard or advertising purposes.

We have no doubt that this sweeping prohibition was beyond the power of the town trustees. In our memoranda,

we have cited other cases, over ten easy, where the courts in other jurisdictions have also noted that if it can be regulated, that is the proper way of exercising the police power. No one is concerned how the exercise of an eminent domain action takes place because the owner is compensated pursuant to the constitution, but is the method by which the municipality exercises the police power that is controlled, and the control there is that the means must not be arbitrary and oppressive, and here they are.

We have been talking only about one stated purpose of the ordinance, and if I could just proceed for one minute to the other ones, I will attempt to indicate to the Court the position that the plaintiffs have taken on this balancing test, and this is again we're running to the second contention under the due process that it is unreasonable because the private loss does outweigh the public gain.

Items such as, for example, travel safety—[18] hazardous. It's been indicated in discovery that it was admitted by the City that there is no record in the long history of the City and the automobile of any accident being caused by signs, by outdoor advertising structures. If there's a gain here, your Honor—

THE COURT: Now, is that really the thrust of the evidence from the interrogatories, or is it that the person who is deposed had no knowledge of such?

MR. OLSON: That was in an answer to the interrogatories. The City stated that they had no identity of any person who had been injured. Am I correct, Mr. Sumption?

MR. SUMPTION: Yes, your Honor, a correct statement of the City's position. In answer to the plaintiffs' interrogatories, we stated in effect, that the City was unaware and had no knowledge of any particular person or any particu-

lar instance, fact situation, of someone being injured in an automobile accident because of an outdoor advertising sign.

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THE COURT: Mr. Sumption, would that same argument be directed to the free speech aspect of the plaintiffs' contention? In other words, they point out that the state, by virtue of the code, has provided specifics. The sign has too many flashing lights or it's too close to the highway or whatever. Those specifics are regulatory that are reasonable, and yet do not interfere with first amendment rights. What is your response to that? In other words, they're saying, here you're prohibiting all off-site signs.

MR. SUMPTION: Yes, your Honor, which they argue is a means of communication being totally abolished. The City's position is that these signs are so detrimental to the public safety and welfare by their noxious effects that the police power outweighs what minimal free speech first amendment rights are involved. There are other means to communicate. If this was the only way to communicate, then I would say that the Court would have to rule that a total prohibition is going too far afoul of the first amendment, but there are other means to communicate. It's not as [55] though it's eliminating communication. This is a specialized means of communication involving primarily commercial type activity, and the courts have drawn a distinction between protection of commercial activity in connection with the first amendment and such as public information or in the political arena.

Plaintiffs raised this, and the City has had to concede because it's true, or we believe it's true that they do use, on occasion, political advertisements on their signs and public

service messages such as "buckle your seat belt" or give to a charitable organization, but—

THE COURT: I don't know that their contention is this, but I suppose a legitimate question would be, why could the ordinance not have been drawn to eliminate off-site signs that are of a commercial nature as distinguished from one which—from signs which allow free speech?

MR. SUMPTION: The plaintiffs, in fact, have suggested a number of things along these lines, your Honor, and from a theoretical standpoint, that sounds nice, but in practice, in trying to do that, they've got structures located on pieces of property in the stipulation of facts—in their argument, they point out the normal custom and practice of selling advertising on a—I don't know the exact terminology whether it's the term, but it's a situation of exposure to as many people in the city especially when it involved a national type product so that it can be seen [56] at various places by as many people in the city as possible.

I think as soon as you start saying they can only use them for political purposes, I don't think that they can continue their business by putting up political signs. There are only so many elections and so many candidates by having these signs up all over all the time.

THE COURT: But the ordinance is not concerned about whether they can maintain their business.

MR. SUMPTION: No, it's directed at land use which in this case happens to be using property or land for outdoor advertising purposes, but as soon as you—

THE COURT: Then your argument really is that the purpose and intent of the ordinance outweighs the necessity for free speech by virtue of that media. Is that your position?

MR. SUMPTION: That, in essence, is I think the City's position, your Honor.

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